



Commonwealth  
of Massachusetts

## *OCPF Online*

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*Office of Campaign and Political Finance*

*One Ashburton Place, Room 411*

*Boston, MA 02108*

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### *Advisory Opinion*

July 25, 2000

AO-00-17

Wendy M. Bittner  
45 Bromfield Street, Suite 1001  
Boston, MA 02108

Re: Independent Expenditures

Dear Ms. Bittner:

This letter is in response to your June 27, 2000 request for an advisory opinion. You have asked about the application of the independent expenditure provision of the campaign finance law, section 18A of M.G.L. c. 55.

Specifically, you have stated that the husband of a private sector union employee is a candidate for state representative in this year's primary election.<sup>1</sup> His wife, the union employee, wishes to attend rallies for the candidate and publicly support her husband. When she attends rallies or publicly supports her husband she will be identified as his wife and not as an employee of the union.

#### **Question:**

May the wife's union make independent expenditures in the general election<sup>2</sup> to support her husband?

#### **Answer:**

Yes.

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<sup>1</sup> In your letter, you mention that the husband and wife have different last names and that the husband is a member of the town committee in the town in which they both reside. Neither fact, however, is relevant to the analysis or conclusion set forth in this opinion.

<sup>2</sup> Whether the candidate's wife "engage[s] only in the conduct set forth above and only in the primary campaign" as you note or also engages in such activity during either or both the primary and general election does not change the analysis or conclusion set forth in this opinion. In the opinion, therefore, we do not make any distinction between the primary and general election.

### **Discussion**

An individual, group or association such as a union may make independent expenditures to promote or oppose a candidate without limitation. See Buckley v. Valeo, 96 S. Ct. 612, 424 US 1 (1976) and its progeny. In Massachusetts, a union or other group or individual that makes an independent expenditure “in an aggregate amount exceeding one hundred dollars during any calendar year for the purpose of promoting the election or defeat of any candidate or candidates” must, however, file a report of such expenditures with this office or, if the expenditure is made to support a municipal candidate, with the local city or town clerk or election commission. See M.G.L. c. 55, § 18A. See also Form CPF 18A: Report of Independent Expenditures, which is enclosed for information.

Section 18A defines the term “independent expenditure” as an

expenditure by an individual, group, or association not defined as a political committee expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or a nonelected political committee organized on behalf of a candidate, or any agent of a candidate and which is not made in concert with, or at the request or suggestion of, any candidate, or any nonelected political committee organized on behalf of a candidate or agent of such candidate.

For the purpose of this opinion, I assume that the union’s independent expenditure will expressly advocate the election of the employee’s husband candidate. Therefore, the question is whether an expenditure made by the union was done in cooperation or consultation with, or at the request or suggestion of, the candidate, his committee or an agent thereof.

Under the facts that you have provided, there are **no facts** indicating that the husband, his political committee or any other person acting as an agent of the candidate including his wife, the union employee, has consulted or cooperated with the union or acted in concert with or requested or suggested that the union make an independent expenditure on his behalf. You have stated that the candidate’s wife is a “union employee.” I assume therefore that the wife is not an officer or other person authorized to make political contributions or expenditures on behalf of the union.

The **mere** fact that the candidate’s wife, who happens to be a union employee, attends a rally or otherwise publicly supports her husband’s campaign does not, standing alone, constitute consultation or cooperation with the union or acting in concert with or at the request or suggestion of an agent of the candidate or his political committee that the union make such an expenditure on the candidate’s behalf.

If the candidate’s wife, however, were (a) to request that the union make an expenditure to support her husband’s candidacy, (b) to discuss any such expenditure with her husband and union officials or (c) take any other action during the campaign regarding such a union expenditure that would constitute consultation or cooperation with the union and the candidate or otherwise be deemed to be in concert with, or at the request or suggestions of, the candidate or his wife or other agent of the candidate or his committee, the expenditure would be an in-kind contribution to his campaign by the union, e.g. a payment to a vendor for a bill for certain campaign goods or services.

Wendy M. Bittner  
July 25, 2000  
Page 3

While such an in-kind contribution may be permissible, the union must provide the husband's campaign with information regarding the true source of the contribution, including the names of the union's officers, the date and value of the contribution and a description of the goods or services provided or paid for. In addition, unlike an independent expenditure made by the union, such a contribution would be subject to the limits imposed by the campaign finance law. See M.G.L. c. 55, s. 6 and OCPF interpretive bulletin IB-88-01. Finally, the candidate's campaign must disclose the in-kind contribution on Schedule C of its campaign finance report.

This opinion is issued within the context of the Massachusetts campaign finance law and is provided solely on the basis of representations in your letter. Please contact us if you have further questions regarding this opinion or any other campaign finance issue.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan  
Director

Enclosure